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FISCAL IMPACT STATEMENT

LS 6467

BILL NUMBER: HB 1488

NOTE PREPARED: Dec 30, 2008

BILL AMENDED:

SUBJECT: Unauthorized Aliens.

FIRST AUTHOR: Rep. Eberhart

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires the Superintendent of the State Police Department to: (1) negotiate terms of a memorandum of understanding (MOU) concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate police employees to be trained under the memorandum.

The bill prohibits a state agency or political subdivision from providing federal, state, or local public benefits to a person who is not a: (1) United States citizen; or (2) qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States. The bill also requires a state agency or a political subdivision to verify the lawful presence in the United States of certain individuals who apply for public benefits. It requires a state agency or political subdivision to: (1) verify the lawful presence of the person; (2) verify the lawful presence of certain individuals through the Systematic Alien Verification of Entitlements (SAVE) program; and (3) report errors and significant delays in the SAVE program.

Penalty Provision: The bill provides that a person who makes a false, fictitious, or fraudulent statement in an affidavit verifying lawful presence commits a Class D felony.

This bill requires employers to: (1) comply with requirements regarding verification of employment under federal law; and (2) make verification forms available for inspection by the Commissioner of Labor. It requires the Commissioner of Labor to file a complaint with the United States Office of the Attorney General if an employer fails to retain or to make available for inspection a verification of each employee.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Memorandum of Understanding:* Under the bill, the ISP would experience an increase in administrative expenditures to apply for the program, provide officer training, and enforce the provisions of the program. State expenditures would depend on the number of officers trained and additional number of persons incarcerated for a federal immigration or customs law violation. Currently, when a State Police officer makes an arrest, the offender can be held in a state correctional facility. Increases in state detention expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where pilot program-trained officers take identified undocumented aliens. Actual increases in expenditures are indeterminable.

Additionally, officers trained under the pilot program may have a responsibility to report criminal unauthorized aliens to the U.S. Department of Homeland Security or U.S. Immigration and Customs Enforcement (ICE) for deportation. If criminal undocumented aliens are deported or held temporarily for deportation hearings, then the state may not experience the full financial burden of detaining offenders. State expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Restrictions on Public Benefits and SAVE Program Requirement: This legislation will ban unauthorized aliens from receiving public benefits from any state entity. The bill requires state agencies and political subdivisions to verify the legal presence of each individual who is (1) at least 18 years of age and (2) applies for federal, state, or local public benefits. Under the bill, verification would be required unless the public benefits provided (1) do not require lawful presence in the United States, (2) emergency medical treatment not related to organ transplants, (3) emergency disaster relief, (4) immunizations and treatment for other communicable diseases, (5) counseling, intervention, and short term shelter in-kind benefits, and (6) prenatal care.

The legislation will require individuals to sign an affidavit stating they are legally present in the United States as a condition of receiving public benefits. State agencies are then required to verify the legal status of applicants claiming to be qualified aliens and legally present in the United States by using the SAVE program. During the process of making a determination, a signed affidavit serves as proof of the individual's lawful presence until a SAVE determination can be made. A person who knowingly or intentionally makes a false or fictitious claim on the affidavit commits a Class D felony.

This bill adds qualification criteria that state agencies are required to use in determining eligibility for public benefits. The bill will increase the workload of state agencies by requiring agencies to: (1) collect information from applicants regarding authorized status, (2) use the SAVE program to verify legal presence of those that claim to be qualified aliens and who sign the affidavit, (3) report any problems with the SAVE program to the U.S. Department of Homeland Security and the U.S. Secretary of State, (4) create a final benefit decision from the SAVE Program determination, and (5) take appropriate action if any individual makes fraudulent claims on their affidavit. It is unknown how many state agencies currently use the SAVE Program. Additionally, state agencies that administer federal, state, or local public benefits will be required to submit an annual report to Legislative Services Agency detailing their compliance with the legislation.

The SAVE program is administered by the United States Citizenship and Immigration Services (USCIS), which is an agency housed in the U.S. Department of Homeland Security. Fees are charged to entities that request verification with the SAVE program. Effective October 1, 2008, agencies are billed on a monthly basis. Fees include a uniform rate of \$0.50 per initial electronic query, an additional \$0.50 for each query requiring additional verification, and a \$2.00 charge for each manual verification request submitted via the G-845 Form. Non-federal agencies are billed on a monthly basis with invoices containing "pay by" dates 30

days after the end of the month of SAVE activity. Increases in state expenditures for the SAVE program will depend on which agencies currently do not use the SAVE program and frequency of activity.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. [In FY 2008, the Division of Family Resources reverted \$1.3 M to the General Fund.]

Impact on Public Assistance: This legislation will impact state and local expenditures on public assistance only to the extent that state and local benefits are currently provided to illegal aliens. Federal benefits are defined under the bill as: (a) any grant, contract, loan, professional license, or commercial license appropriated funds of the United States, (b) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by appropriated funds of the United States. Currently, unauthorized aliens are not banned from receiving care and services necessary for the treatment of an emergency medical condition; short-term, noncash, in-kind emergency disaster relief; public health assistance for immunizations; and other services designated in federal law. Additionally, federal law specifies that unauthorized aliens are not eligible for any state or local public benefit programs that receive federal funding in full or in part.

Indiana Code specifies that unauthorized aliens are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and unemployment insurance. This bill would encompass the remaining state and local benefits that do not receive any federal funding. The bill could potentially reduce the number of persons in the state who are eligible for state benefits. This could result in state savings or allow the state to redirect funds to others currently not receiving program benefits. Actual savings for the state would depend on the number of persons determined to be ineligible and the type and cost of services that they would otherwise receive. [Note: Some of these programs may be reimbursable by the federal government. Should the state not reallocate the funds to other persons within a program for services, the state could potentially reduce its overall federal funding.]

Penalty Provisions: Under the bill, a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit executed to verify their legal presence in order to receive public benefits commits a Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Commissioner of Labor: This bill requires employers to make employment verification forms available to the Department of Labor. Additionally, the Commissioner of Labor is required to file complaints with the U.S. Office of the Attorney General if employers fail to retain these forms or make them available for inspection. This may increase the workload of the Department of Labor to the extent that the Commissioner encounters employers that refuse to or do not maintain employment verification forms. Actual increases in

workload are indeterminable. The Department of Labor currently has no vacant positions, so depending on the number of complaints filed with the U.S. Attorney General, any increase in workload will either have to be accomplished within the current resource levels or additional resources may be required.

Background Information: Over the current biennium, the ISP is authorized to receive approximately \$20.8 M in federal funds for various programs, including Homeland Security programs. According to the Pew Hispanic Center, it is estimated there are 100,000 undocumented migrants in Indiana as of 2006.

The DOC reports the following costs for detaining unauthorized aliens for SFY 2008.

State Fiscal Year	Average Daily Population of Unauthorized Aliens	Per Diem	Cost Per Day	Cost Per Year
2008	475	\$52.61	\$24,989.75	\$9,121,258.75

Currently, the Division of Family Resources (DFR) requires a declaration of citizenship/immigration status during the application process for public benefits. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits. DFR does not report these individuals to U.S. Citizenship and Immigration Services (USCIS) unless USCIS has established that the immigrant is unlawfully in the United States. SAVE verification is currently used by DFR, but is not required in the benefit application process. Refusal to sign the declaration of lawful presence will result in ineligibility for public benefits.

Explanation of State Revenues: Under the State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund. The state of Indiana received \$871,000 in FFY 2008 from the SCAAP Program.

Penalty Provision: The bill provides that a person who makes a false, fictitious, or fraudulent statement in an affidavit verifying lawful presence commits a Class D felony. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Background Information: DOC received \$871,218 in awards from the SCAAP program for FFY 2008. This amount provided reimbursement for 9.5% of DOC's estimated expenses for incarcerating unauthorized aliens during that year.

Explanation of Local Expenditures: *Memorandum of Understanding:* When a State Police officer makes an arrest, the offender is held in the place of detention within the jurisdiction of the arrest, which can include local jails and prisons. Increases in local expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where identified undocumented aliens are held. The actual increase in expenditures is indeterminable. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Officers trained under the pilot program may report criminal unauthorized aliens to the U.S. Department of Homeland Security or ICE for deportation. If criminal undocumented aliens are deported or held temporarily for deportation hearings, then local detention facilities may not experience the full financial burden of detaining offenders. Local expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Public Benefits for Unauthorized Aliens: This bill will increase the expenditures of political subdivisions that would be required to utilize the SAVE program to verify legal presence of benefit applicants who identify as legal nonresidents. Expenditures will increase to the extent that the SAVE program was not previously used to verify legal resident status. The ability of local political subdivisions to use the SAVE program as well as the funding status of each political subdivision that provides public benefits is indeterminable.

Local political subdivisions will also be required to create reports detailing their compliance to the legislation. This can impact the workload and resources of these local agencies to the extent these tasks were not performed before.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: Under the SCAAP program, a portion of the costs for incarcerating or detaining undocumented criminal aliens will be reimbursed to local detention facilities provided detained individuals qualify under program guidelines. The actual amount local detention facilities will receive is indeterminable, but will depend on qualifying expenses and criminal convictions of incarcerated undocumented criminal aliens.

Court Fee Revenue: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Background Information: The following counties received payments from the SCAAP program in FFY 2008. Table D provides information on the total amount counties received.

Table D: 2008 County SCAAP Awards.	
County	Amount Received
Allen	\$22,220
Grant	\$4,375
Blackford	\$1,733
Hamilton	\$31,615
Noble	\$10,825
Johnson	\$4,071
Hendricks	\$9,557
Cass	\$15,808
Porter	\$1,491
Marion	\$94,637
Total	\$196,332

State Agencies Affected: All state agencies that administer public benefits; Department of Labor; Indiana State Police; DOC.

Local Agencies Affected: All local units that administer public benefits; Trial courts; Local law enforcement agencies.

Information Sources: *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2009*; Pew Hispanic Center: *The Foreign Born Populations in the U.S. and Indiana, Presentation to the Interim Study Committee on Immigration Issues, September 9, 2008*; United States Bureau of Justice Assistance; Tim Brown, DOC; Captain Sherry Beck, Indiana State Police; Indiana Sheriffs' Association; U.S. Immigration and Customs Enforcement.

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